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Attorneys for Plaintiff

FILED

FEB X 6 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA AND STATE  
OF CALIFORNIA EX. REL.  
RUSTY FRYBERGER; STEVE RUEL; SCOTT  
THOMPSON SR.; SSL, LLC, SURECAST, LLC

Plaintiffs,

vs.

KIEWIT PACIFIC COMPANY; KIEWIT  
INFRASTRUCTURE GROUP; RON RATTAI;  
JOHN CHAMBERLAIN; BRUCE HESSE; DOES  
I-X

Defendants.

No. C 12-02698 HRL

FILED UNDER SEAL

APPLICATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE

TO: CLERK OF THE COURT; and

TO: DEFENDANT AND ITS ATTORNEY

Come now Relator and Use Plaintiffs Fryberger, Ruel and Thompson and move  
the court for a 60 day continuance of the scheduling conference presently scheduled for  
Friday 8 February 2013 This application is based upon the files and pleadings herein  
and the accompanying declaration of Bruce P. Babbitt.

The grounds of this application are that Relator/Plaintiff's counsel received the  
Court's order unsealing the matter via email on January 24, 2013 and have informed

APPLICATION TO CONTINUE CASE MANAGEMENT  
CONFERENCE - 1

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1 the Relators of that order. The Relators have not determined at this time whether to  
 2 prosecute the case without the participation of the United States and the State of  
 3 California.

4 There is at least one other action pending related to the failure of the  
 5 Mechanically Stabilized Earth retaining walls on the subject project dealing with claims  
 6 by the Defendant Kiewit against the Relator's company SSL, LLC, and potential actions  
 7 for coverage of claims on the material bond, and for a defense of certain of the claims  
 8 brought by Kiewit. Plaintiff SSL and Relators Ruel and Thompson have engaged both  
 9 defense and coverage counsel for those claims.

10 Most of these other claims and the other action involving Defendant Kiewit have  
 11 a common nexus of fact and law with the False Claims Act case now pending in this  
 12 Court and the Pendant Claims for contract balances and for defamation.

13 The Relators, their Counsel, and their Coverage Counsel are actively engaged in  
 14 discussions with the bonding company and with the insurance carriers with regard to  
 15 the proper jurisdiction and venue for the claims and demands of the Relators, SSL, LLC,  
 16 and Kiewit. For that reason the Relators and SSL request an extension of time of 60  
 17 days to allow completion of the necessary discussions and arrangements with the other  
 18 parties with an interest in the venue of the various actions involving them and  
 19 Defendant Kiewit.

20 DATED: February 5, 2013

21 JAMESON BABBITT STITES  
 22 & LOMBARD, PLLC

23 By: s/Bruce P. Babbitt  
 24 Bruce P. Babbitt, WSBA #4830  
bbabbitt@jbsl.com  
 25 Attorneys for Plaintiff  
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APPLICATION TO CONTINUE CASE MANAGEMENT  
 CONFERENCE - 2

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**ORDER**

THIS MATTER came on for consideration on the application by plaintiff to continue the case management conference currently set for February 8, 2013. The Court has considered the application and the response by defendants and supporting declaration(s), if any, and being fully advised in the premises, it is hereby:

ORDERED that the application is GRANTED and the case management conference is hereby continued to 4/5/13.

DATED this 5th day of February, 2013.

  
Hon. Judge Susan Illston  
United States District Judge

Presented by:

JAMESON BABBITT STITES & LOMBARD

By: s/Bruce P. Babbitt  
Bruce P. Babbitt, WSBA #4830  
Attorneys for Plaintiff

APPLICATION TO CONTINUE CASE MANAGEMENT  
CONFERENCE - 3

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9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA AND STATE  
12 OF CALIFORNIA EX. REL.  
RUSTY FRYBERGER; STEVE RUEL; SCOTT  
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13 Plaintiffs,

14 vs.

15 KIEWIT PACIFIC COMPANY; KIEWIT  
16 INFRASTRUCTURE GROUP; RON RATTAI;  
JOHN CHAMBERLAIN; BRUCE HESSE; DOES  
I-X

17 Defendants.

No. C 12-02698 HRL

FILED UNDER SEAL

DECLARATION OF BRUCE P. BABBITT  
IN SUPPORT OF APPLICATION FOR A  
CONTINUANCE OF THE SCHEDULING  
CONFERENCE

18 TO: CLERK OF THE COURT; and

19 TO: DEFENDANT AND ITS ATTORNEY

20  
21 Bruce P. Babbitt states as follows,

22 I am over 18 years of age, have personal knowledge of the facts recited herein  
23 and would be competent to testify in court as to the subject matter of this declaration.

24 I am one of the attorneys for the Relator/Plaintiffs Fryberger, Ruel and Thompson and  
25 for Plaintiff SSL, LLC.  
26

DECLARATION OF BRUCE P. BABBITT - 1

1 The United States and the State of California have filed their declinations to intervene  
2 and prosecute this matter. The order of this Court unsealing the complaint was  
3 received via email on January 24<sup>th</sup> 2013. Because of that election the Relators will  
4 have to prosecute this action on their own.

5 There are other claims and demands between the parties besides those set out  
6 on the first amended complaint in this matter, including breach of contract, failure to  
7 pay, and defamation.

8 Defendant Kiewit, for its part has made claims against the material bond the SSL,  
9 LLC furnished, and upon which bond the Relators Thompson and Ruel are Guarantors.  
10 The company that issued the material bond has made claims for indemnity. The bond,  
11 upon my information and belief, has declined to pay Kiewit what it demands. Also, to  
12 the extent that design is implicated, there is a project Error and Omissions Policy.  
13 Other counsel, including coverage counsel are involved in the other matters that I have  
14 set out. I have recently entered into discussions with coverage counsel and defense  
15 counsel on the other matters with regard to in which forum the parties' respective  
16 claims and demands ought to be tried, and whether the Relators will choose to continue  
17 to pursue this matter without the intervention of the United States and the State of  
18 California. Those counsel are in turn in contact with the various bonding companies  
19 and insurance carriers.

20 The Kiewit Defendants have not been served with the first amended complaint at  
21 this time. It may be some time before the various parties in interest have determined  
22 the proper venue for all of the claims involved in the project. For that reason it is  
23 impracticable to set a case schedule, particularly since service has not been  
24 accomplished on the Kiewit Defendants, and depending upon the decision whether to  
25 go forward, may not be served at all.  
26

DECLARATION OF BRUCE P. BABBITT - 2

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1 Your declarant believes that the determination as to proceeding and the proper venue  
2 for the various claims can be resolved in 60 days, after which the Relators will decide  
3 whether to proceed in this Court or to dismiss their action.

4 I hereby certify under penalty of perjury of the laws of the State of Washington that the  
5 foregoing is true and correct.

6 DATED: February 5, 2013, at Seattle, Washington.

7 s/ Bruce P. Babbitt

8 Bruce P. Babbitt, WSBA #4830  
9 bbabbitt@jbsl.com  
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DECLARATION OF BRUCE P. BABBITT - 3

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